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PETUITIES (3 ed.), § 319. Hence it would seem equally applicable to the present case. This difficulty might be overcome by invoking certain theories that have been applied in land-option cases. Exercising the option is said to cause a conversion which relates back to the grant thereof. *Townley v. Bedwell*, 14 Ves. 591; *Kerr v. Day*, 14 Pa. 112. *Contra*, *Smith v. Loewenstein*, 50 Ohio St. 346, 34 N. E. 159. This is a questionable extension of equitable conversion and is confined to options to purchase the fee contained in leases. By another doctrine an option-holder who is virtually the *dominus* of the property by reason of the attendant circumstances has a power which is a vested interest and not subject to the rule against perpetuities. *Diffenderfer v. Public Schools*, 120 Mo. 447, 25 S. W. 542; *Pollock v. Booth*, Ir. R. 9 Eq. 229. *Contra*, *Morrison v. Rossignol*, 5 Cal. 64. See KALES, FUTURE INTERESTS, § 260; GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 230.

STATUTE OF FRAUDS — ORAL SALE OF PERSONALTY — PAYMENT BY CHECK. — Plaintiff agreed orally with the defendant to buy cattle and gave his check in full payment of the price. The defendant returned the check without presenting it for payment. The plaintiff sued to recover damages for breach of contract, contending that the Statute of Frauds had been complied with. *Held*, that plaintiff cannot recover. *Bates v. Dwinell*, 164 N. W. 722 (Neb.).

Section 17 of the Statute of Frauds requires that the buyer under an oral contract relating to personalty shall give something in part payment to bind the bargain. It has been held that the check of a buyer, drawn upon a deposit and accepted by the seller, has sufficient money value to satisfy the statute. *McLure v. Sherman*, 70 Fed. 190. This would seem wrong. If bare acceptance of a check would suffice, subsequent dishonoring could have no effect, as the statute once satisfied, remains so. Yet in such a case the court held that the statute was not satisfied. *Hessberg v. Welsh*, 147 N. Y. Supp. 44. If the paper is paid, undoubtedly the transaction is within the statute. *Hunter v. Wetsell*, 84 N. Y. 549. Otherwise, such payment is conditional or a means of obtaining money, rather than the absolute payment required. *Groomer v. McMillan*, 143 Mo. App. 612, 128 S. W. 285. See WILLISTON, SALES, § 98. The principal case adheres strictly to the spirit of the statute and renders more certain a point upon which the authority is scant.

WAR — CONTRACTS BETWEEN CITIZENS OF BELLIGERENT COUNTRIES — DISSOLUTION. — A charter-party for five years between an English company and a Dutch corporation, all of whose shares were held by Germans, and whose directors were Germans resident in Holland and controlled by a supervisory committee of Germans, provided that in case of war the charterers and (or) owners should have the option of suspending the contract during hostilities. On the outbreak of war the Dutch company gave notice of its election to suspend the contract for the duration of the war. The English company petitioned for a decree of dissolution. *Held*, that the charter-party be dissolved. *Clapham S. S. Co. v. Handels-en-Transport-Maatschappij Vulcaan*, [1917] 2 K. B. 639.

For a discussion of this case, see Notes, page 643.

WILLS — CONSTRUCTION — TRUST OR ABSOLUTE GIFT — AVOIDING RULE OF MORICE V. THE BISHOP OF DURHAM. — A testator left the residue of his property in trust for various purposes, the last share of the income thereof to be paid to B. "or to any other person or persons whomsoever, as the trustee for the time being in the uncontrolled absolute discretion or pleasure of said trustee shall see fit." *Held*, that the trustee takes this share beneficially. *Norman v. Prince*, 101 Atl. 126 (R. I.).

It seems reasonably clear that the testator intended to give the trustee such complete dominion over this share as amounts to the beneficial ownership

thereof. See *Ellis v. Selby*, 1 Myl. & Cr. 286, 299. And certainly the fulfilment of the intent of the testator is the final aim of the construction of a will. See *Davison v. Wyman*, 214 Mass. 192, 194, 100 N. E. 1105, 1106. Yet the decision in the principal case is opposed to a long line of cases construing similar provisions. Thus courts quite uniformly have held that the use of the words "on trust" in itself sufficiently establishes an intent to create a trust. *Buckle v. Bristow*, 10 Jur. n. s. 1095; *Yeap Cheah Neo v. Ong Cheng Neo*, L. R. 6 P. C. 381; *Haskell v. Staples*, 100 Atl. 148 (Me.). Similarly when property is left to a legatee designated by the name of executor or trustee, "to be disposed of as he thinks best," or words of similar effect, it is generally held that the executor or trustee does not take beneficially. *Ellis v. Selby*, 1 Myl. & Cr. 286; *Fowler v. Garlike*, 1 Russ. & M. 232; *Vezey v. Jamson*, 1 Sim. & S. 69; *Balfe v. Halpenny*, [1904] 1 I. R. 486. If in addition to the phrase "on trust," or the description as "trustee," a separate legacy is given to the donee, courts consider the evidence practically conclusive of an intent to create a trust. *Davison v. Wyman*, 214 Mass. 192, 100 N. E. 1105; *Haskell v. Staples*, *supra*; *Balfe v. Halpenny*, *supra*. *Contra*, *Gibbs v. Rumsey*, 2 V. & B. 294; *Ralston v. Telfair*, 17 N. C. 255. In all of the later cases the courts profess to be carrying out the intent of the testator. In fact, however, set judicial construction of these oft-recurring phrases have developed in some courts and find their way into the later decisions. The result is that dispositions like that in the principal case are unnecessarily thrust within the rule of *Morice v. The Bishop of Durham*; the intended trust fails for indefiniteness and the intent of the testator is completely and needlessly thwarted. The principal case, therefore, is notable for its freedom from the constraint of decisions resting on the technicality of an earlier day, and for the intentional avoidance by the court of the unsatisfactory doctrine of *Morice v. The Bishop of Durham*. See J. B. Ames, "The Failure of the Tilden Trust," 5 HARV. L. REV. 389; A. W. Scott, "Control of Property by the Dead," 56 U. of Pa. L. REV. 527, 538, et seq.

BOOK REVIEWS

THE LAW OF CONVERSION. By Renzo D. Bowers. Boston: Little, Brown, and Company. 1917. pp. lx, 583.

Mr. Bowers, it would seem, has attempted the impossible. A satisfactory treatise on that peculiarly English development, the law governing liability for conversion of chattels, cannot be written without reference to the English cases. The author, it is true, has not attempted to treat the subject historically. His aim is to produce a practical American law book. Somewhere between its covers there are cited a large number (more than 6000, the author tells us) of the American cases relating to its subject matter; and very many of these cases are summarized; and copious extracts from many opinions are given. One may, by the use of a rather comprehensive index or of the table of contents, find cases on most of the specific questions relating to conversion on which the courts of this country have had occasion to pass. It is, in this sense, a practical American law book. But there is little or no analysis of the principles underlying the subject. Why is it that one man may force another who has intermeddled with his property to buy it? How far is the law of conversion a matter of procedure, and how far of substantive law? On these matters the book throws little light. The author simply tells us that, "it is said," thus and so, and that, "on the other hand it is said," contrariwise. Do not the encyclopedias and digests do as much?

AUSTIN W. SCOTT.